SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 714

MACCLENNY TURPENTINE COMPANY, A FLORIDA CORPORATION, ET AL,

Petitioners,

vs.

BALDWIN DRAINAGE DISTRICT, A PUBLIC CORPORATION, ET AL.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I

Opinion Below

The opinion of the Supreme Court of Florida filed April 4, 1944, and reaffirmed by the order of August 1, 1944, is in the transcript of record presented with this petition and brief at pages 113 to 120. That opinion has been reported as the case of Baldwin Drainage District, et al vs. Macclenny Turpentine Company, et al, 18 So. (2d) 792-802.

II

Jurisdiction.

A statement disclosing the basis of jurisdiction of this Court as contended for by the Petitioners is specifically set forth as part of the foregoing petition for certiorari, that

is to say petition for certiorari is sought pursuant to the terms of Section 237 Judicial Code, also 28 U. S. C. A., Section 344. Record references showing what happened subsequent to the filing of the opinion and judgment of the Supreme Court of Florida on April 4, 1944, are fully set forth in said jurisdictional section of the foregoing petition and need not be repeated.

III

Statement of the Matters Involved

The foregoing petition for writ of certiorari under the heading "Questions Presented" has stated in capitalized type six Federal questions presented by the record and as to which the Petitioners seek this Court's decision. The questions as so presented by the petition for certiorari are respectfully referred to as part of this supporting brief, the Petitioners deeming repetition unnecessary.

IV

Assignments of Error

1. The Supreme Court of Florida erred in so construing and applying the General Drainage Statute of Florida as to put State tax title grantees and State tax certificate owners in privity with former owners, making such present owners subject to waiver and acquiescence that may have existed against such former owners to such an extent as to bar the present tax title owners from having their well-pleaded facts and attacks contained in their bill determined upon their merits and in that behalf the Supreme Court of Florida impaired Petitioners' tax title grants and deprived Petitioners of due process and equal protection as guaranteed by the Fourteenth Amendment.

2. The Supreme Court of Florida erred in that said Court deprived the Petitioners of a fair hearing contrary to the due process and equal protection clauses of the Fourteenth Amendment when the Supreme Court of Florida based its decision upon vague assumptions and conjectures of what had been the conduct of prior owners and at the same time disregarded the well-pleaded facts of Petitioners' bill admitted by the attacking motions.

3. The Supreme Court of Florida erred in construing and upholding Chapter 6458, Laws of Florida 1913, in such manner as to warrant the inclusion within the Baldwin Drainage District of four separate, distinct and unrelated watersheds and as warranting the spreading of common burdens upon the lands of the Petitioners in the Western watershed of said District for bonds and moneys spent or wasted in other watersheds of said District, wholly without benefit to the lands of Petitioners, all contrary to the due process and equal protection clauses of the Fourteenth Amendment.

4. The Supreme Court of Florida erred in refusing to determine that the facts well pleaded in Sections VIII, XII, XIII and related sections of the bill were sufficient to show that the District Supervisors have from year to year confiscated Petitioners' property without hearing and without any opportunity for hearing to Petitioners, or their predecessors in title, all contrary to the due process clause and equal protection clause of the Fourteenth Amendment.

5. The Supreme Court of Florida erred in declining to hold that the well-pleaded facts of Section XIV and related sections of the bill, (showing that the Drainage District never put into effect any part of the drainage works and wholly abandoned material parts of the plans designed to benefit Petitioners' properties and left other properties

of Petitioners in the same or a worse condition than before) made out a case of taking Petitioners' properties without due process and without equal protection of the laws by the imposition of taxes complained of, especially when all parts of those taxes imposed for the second and third bond issues had to do with moneys wasted or spent in other watersheds of said Districts than the one where Petitioners' properties were situated.

6. The Supreme Court of Florida erred in sustaining the levy of past and future maintenance taxes upon the properties of Petitioners notwithstanding all the well-pleaded facts set up in Section XV of the bill and related sections.

7. The Supreme Court of Florida erred in misconstruing and mis-applying the decision of this Court in *Tulare Irr. Dist.* v. *Shepard*, 185 U. S. 1, in such manner as to bar the Petitioners, including tax title holders and tax certificate holders, from all right to a hearing on the matters well pleaded in their bill of complaint.

The foregoing assignments of error, 1 to 6, inclusive, constitute what we believe are the proper affirmative answers to questions 1 to 6 set forth in the foregoing petition for writ of certiorari under the general heading "Questions Presented." The seventh assignment of error is a restatement of one of the reasons contained in the foregoing petition for granting the writ of certiorari.

V

Argument

The foregoing petition for certiorari under the general heading "Questions Presented" stated six Federal questions raised by the record in this cause and following the

statement of each question the Petitioners presented an analysis of the record pertaining to each such question with citations of sustaining authorities. We believe that we cannot improve upon the exposition of the record on each such question as there presented. We believe also that sufficient authority was cited in connection with each such question to sustain the foregoing assignments of error 1 to 6, inclusive, and, therefore, we submit the discussion and authorities supporting those six questions as the Petitioners' argument in support of the aforesaid assignments of error 1 to 6, inclusive, without further enlargement and without further repetition.

The seventh assignment of error having to do with the application made by the Supreme Court of Florida of the *Tulare* case justifies some further discussion. For purposes of clarity, we shall restate the seventh assignment of error:

> "7. THE SUPREME COURT OF FLORIDA ERRED IN MISCONSTRUING AND APPLYING THE DECISION OF THIS COURT IN TULARE IRR. DIST. V. SHEPARD IN SUCH MANNER AS TO BAR THE PETITIONERS, INCLUDING TAX TITLE HOLDERS AND TAX CERTIFICATE HOLDERS, FROM ALL RIGHT TO A HEARING ON THE MATTERS WELL PLEADED IN THEIR BILL OF COMPLAINT."

In the several arguments before the Supreme Court of Florida, counsel for the Respondents laid great stress on the decision of this Court in *Tulare Irr. Dist.* v. *Shepard*, 185 U. S. 1. The majority opinion of the Supreme Court of Florida accepted the line of argument so made based on that case and rendered its decision accordingly. At the outset, we make observation that the decision in the *Tulare* case was confined to the particular facts in the record then before the Court. The best support of this conclusion is the fact that the *Tulare* case has only been cited once by this Court in all the years since that decision. That citation was in

Ocean Beach Heights, Inc. v. *Brown-Crummer Inv. Co.*, 302 U. S. 614, 619, on a point not here involved.

There are many reasons why the decision in the *Tulare* case is distinguishable and stands wholly apart from what is involved in the case at bar.

1. That was a suit against the irrigation district by certain bondholders to obtain a judgment on matured coupons. Here the suit is entirely of a different nature, namely, one by property owners attacking the validity of drainage tax assessments.

2. The bonds held by the plaintiffs in the *Tulare* case were general obligations of the district and fully negotiable because the Wright Act there involved and involved in the prior decision of *Fallbrook Irr. District* v. *Bradley*, 164 U. S. 112, gave the district power to levy general *ad valorem* taxes to whatever extent might be necessary to pay the bonds and interest thereon and the act had been construed by the Supreme Court of California as authorizing the issuance of negotiable bonds, whereas here, as pointed out in Section X of the amended bill (R. 47) it has been held by the Florida Supreme Court that drainage district bonds are "not general obligations" of such a district because they are payable out of a special fund which may never be adequate to pay them and in consequence are not unconditional promises to pay.

3. The opinion in the *Tulare* case expressly found that the complaining bondholders were *bona fide* purchasers of such negotiable bonds for "full value," whereas here the bondholders were not *bona fide* purchasers and paid only a nominal value, namely 5 cents to 10 cents on the dollar for the bonds after nearly all of them were long since in default and fully matured.

4. The bondholder plaintiffs in the *Tulare* case bought their bonds at the very outset of the irrigation project. Their money was used to develop the project. Here the bondholders purchased in the open market *caveat emptor* charged with knowledge of and subject to all equities existing in favor of landowners. *O'Brien* v. *Wheelock,* 184 U. S. 450, 492-496, 46 L. Ed. 636, 655-657.

5. The District as a defendant in the *Tulare* case undertook through its officers to repudiate the bonds owned by the plaintiffs after having put forth the bonds with appropriate recitals and after having received the plaintiff's money therefor, whereas the ground of attack was as found by this Court to be at the most an immaterial defect and mere irregularity, making their attack both incompetent and unsustainable. Not so as to the matters complained of in the several sections of the amended bill here.

6. The two landowner parties who intervened in the *Tulare* case and undertook to make common cause of defense with the irrigation district had received "full benefit" of the irrigation project with respect to their properties and had otherwise acquiesced and approved the project and the issuance of negotiable bonds to the plaintiffs for "full value." No such situation is presented by the amended bill here. Quite the contrary.

7. Many questions are presented by the amended bill here which were in no manner involved in the *Tulare* case. Such, for example, as the unauthorized changes in the plans of reclamation without any opportunity to be heard and without any reassessments of benefits. Also the *Tulare* case did not involve any tax title property owners who had acquired their titles direct from the State ten, fifteen to twenty years after the district was created.

The same counsel who now urges the proposition of acquiescence and estoppel did the same in *Ocean Beach Heights* v. *Brown-Crummer Inv. Co.*, 302 U. S. 614, but this Court answered that contention in this language:

> "The consent of owners of lands located beyond permissible limits of a municipality cannot be made to serve as would a statutory grant of power."

This Court has laid down many other rules applicable to the doctrines of estoppel and acquiescence which were entirely overlooked by the Supreme Court of Florida when that Court made its erroneous application of the *Tulare* case in the manner above pointed out. For instance, in the case of *Ketchum* v. *Duncan*, 96 U. S. 659, 666, 24 L. Ed. 868, 871, this Court said:

> "Moreover, it is necessary to notice who sets up this plea of estoppel. An estoppel *in pais* does not operate in favor of everybody. It operates only in favor of a person who has been misled to his injury, and he only can set it up."

In the case at bar, the Supreme Court of Florida entirely overlooked making any inquiry as to who were the parties urging estoppel on the ground of supposed acquiescence by former owners. The parties urging such matter were the Drainage District itself and the two speculating bondholders who did not come into the picture until 1937 when they began buying their present holdings at five to ten cents on the dollar and at that time all of the first $300,000.00 bond issue was past due and a very large part of the second and third bond issues were past due. Neither the District nor such bondholders were in any manner misled to their injury by what the Florida Supreme Court assumes may have been done or omitted "by those who could have protested." In this case the insolvent District has itself been in default of performance for about twenty-four years.

The same line of reasoning was restated in *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 323, 80 L. Ed. 688, 698, as follows:

> "Estoppel in equity must rest on substantial grounds of prejudice or change of position, not on technicalities."

In the case at bar, Section XVI of the bill (R. 74) specifically alleges that neither the District nor any of its bondholders was ever prejudiced or caused to change position on account of anything done or not done by the Petitioners. The attacking motion to dismiss admitted those averments. Therefore, if any facts existed to the contrary it was requisite that showing thereof be made by answer.

Again in *Buffum* v. *Peter Barceloux Co.*, 289 U. S. 227, 77 L. Ed. 1140, the third headnote was as quoted page 24, supra. In the opinion supporting that headnote, the Court, among other things, said:

> "There can be no irrevocable estoppel when the truth has been withheld."

In Sections XII and XIII of the bill now before the Court, it is specifically alleged that neither the Petitioners nor their predecessors in title ever had any hearing or notice of the changes in the original decree which the Supervisors undertook to make and the changes in the original plan of reclamation which they undertook to make. On the contrary, the Supervisors falsified their records in order to avoid compliance with the statutes, namely what is now Section 1491 and Section 1500, Compiled General Laws of Florida. See in this behalf also the case of *Risty* v. *Chicago, etc. R. Co.*, 270 U. S. 378, quoted page 24, supra. Along the same line is the decision of this Court in *Johnson* v. *Zerbst*, 304 U. S. 458, 82 L. Ed. 1461, first and second headnotes quoted page 11 supra.

There are still other parts of the bill in this case which negative any room for present consideration of estoppel or acquiescence on the part of the Petitioners or former owners. Section II of the bill shows the tax title ownerships derived from the State as an independent paramount source. Those tax titles were obtained from ten to twenty years after the Drainage District was organized. The State was not estopped by what former owners did and, there being no privity between the tax title grantees and such former owners, no conduct of such former owners could bind such grantees. That is the law laid down in the case of *Hussman* v. *Durham*, 165 U. S. 148, quoted page 8, supra.

As another illustration, it is alleged in Section IV-B of the bill (R. 14) that the Petitioner, Anna F. Stokes and the Petitioner, Mrs. Fouraker acquired title from their ancestor, J. T. Fouraker, who was the owner of the property described in that part of the bill at the time attempt was made to organize the District, but that said Fouraker had no notice of the application to form the District and no notice that assessments of benefits had been made and

> "that said Fouraker did nothing in his lifetime to recognize the validity of any of the proceedings relating to said District."

The attacking motion to dismiss admitted these allegations and yet the Supreme Court of Florida assumed the contrary.

On this subject of acquiescence, we may again call the Court's attention to the decision of the Supreme Court of Florida itself in *Smith* v. *City of Winter Haven*, 18 So. (2d) 4, quoted page 30, supra. That decision is in line with the numerous decisions of this Court above quoted and is altogether contrary to what was announced by the majority opinion in this case.

It is respectfully submitted that the Petitioners are entitled to the writ prayed for.

We appreciate the fact that on the Court's docket are now found many cases of National importance due to the progress of the war and war-time legislation. Nevertheless, it is important that fundamental rights of litigants be protected even in time of war so that when peace comes our social order will not be torn to pieces and we may return to our normal way of life without embarrassment over Court decisions that fail to give proper recognition of such fundamental rights.

We submit, further, that reasons A to I, inclusive, stated in the foregoing petition, for granting the writ of certiorari, are also good reasons why the judgment of the Supreme Court of Florida should be reversed.

Respectfully submitted,

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